

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

22-CR-109-V

PAYTON GENDRON,

Defendant.

**GOVERNMENT’S RESPONSE IN OPPOSITION TO DEFENDANT’S
SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENSE
MOTION TO STRIKE THE DEATH PENALTY**

The United States of America, by and through its attorneys, Michael DiGiacomo, United States Attorney for the Western District of New York, and Harmeet K. Dhillon, Assistant Attorney General, Civil Rights Division, and Joseph M. Tripi, Brett A. Harvey, Caitlin M. Higgins, and Maeve Huggins, Assistant United States Attorneys, Daniel Grunert, Trial Attorney, Civil Rights Division, and Michael Warbel, Trial Attorney, Criminal Division, of counsel, respectfully submits this response in opposition to the defendant’s Supplemental Memorandum in Support of Defense Motion To Strike The Death Penalty As A Possible Punishment In This Case (*see* Docket Nos. 342, 181).

In his original motion, the defendant moved the Court to, among other things, find that the Federal Death Penalty Act (“FDPA”) operates in an arbitrary and capricious manner, in violation of the Eighth Amendment. See Docket No. 181 at 7-19. On July 19, 2024, the government filed a memorandum in opposition to the defendant’s motion. See Docket No.

191.¹ In February 2025, the Court granted the defendant leave to supplement his motion with the record from the evidentiary hearing from the District of Vermont in *United States v. Fell*, which dealt with a nearly identical motion. On May 1, 2025, the defendant filed his supplement, adding the full record from the *Fell* hearing and additional information from Dr. Mona Lynch on the issue of how death qualification purportedly leads to impartial juries in capital cases. *See* Docket Nos. 342, 343. With this response, which offers no new arguments and requires no reply, briefing should now be complete, rendering the motion ripe for decision.

The government declines to offer rebuttal evidence beyond that which it introduced in the supplemental record in *Fell*. Nonetheless, the government denies that it has pursued capital punishment in an improper manner, that its capital judgments are defective, or that the defendant's rights are being violated in any way. Without conceding any factual assertions included in the supplemental record, even taking the evidence in the light most favorable to the defendant, the materials do not entitle him to relief.

Nothing in the supplemental materials changes the fact that, as argued in the government's initial response, binding precedent forecloses the defendant's arguments. *See* Docket No. 191 at 9-12. Indeed, as the *Fell* court held: "Institutional authority to change this body of law is reserved to the Supreme Court. For this reason, the trial court is required to deny the defense motions related to the constitutionality of the death penalty." *United States v. Fell*, 224 F. Supp. 3d 327, 359 (D. Vt. 2016).

¹ The government incorporates Docket No. 191 herein by reference.

Accordingly, and for the reasons set forth more fully in the government's initial response, this Court should deny the defendant's motion without a hearing.

DATED: Buffalo, New York, May 9, 2025

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